

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GEORGE LEASURE; AMY LEASURE,
Plaintiffs,
v.
WILLMARK COMMUNITIES, INC., a
corporation; ALPINE CREEKSIDE, INC., a
corporation,
Defendants.

Civil No. 11-cv-0443-L (POR)

**ORDER REGULATING DISCOVERY
AND OTHER PRETRIAL
PROCEEDINGS**

On November 10, 2011, the Court held a Case Management Conference. Appearing before the Court were: Randall Christison, Esq., counsel for Plaintiffs; and John Paul Teague, Esq., counsel for Defendants. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, IT IS HEREBY ORDERED:

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed on or before **December 19, 2011**.
2. A Mandatory Settlement Conference shall be conducted on **April 20, 2012**, at **10:00 a.m.**, in the chambers of the Honorable Judge Louisa S Porter's successor. Counsel shall lodge confidential settlement statements directly with Judge Porter's successor on or before **April 13, 2012**. The settlement statements should include a neutral factual statement of the case, identify controlling legal issues, and concisely set out issues of liability and damages, including any settlement demands and offers to date and addressing special and general damages where applicable. The settlement statements **shall not** be filed with the Clerk of the Court.

1 All parties and claims adjusters for insured defendants and representatives with complete
 2 authority¹ to enter into a binding settlement, as well as the principal attorney responsible for the
 3 litigation, shall be present and legally and factually prepared to discuss and resolve the case at the
 4 settlement conference. Corporate counsel and/or retained outside corporate counsel **shall not** appear
 5 on behalf of a corporation as the party who has the authority to negotiate and enter into a settlement.
 6 The parties must be legally and factually prepared to discuss and resolve the case at the mandatory
 7 settlement conference. All conference discussions will be informal, off the record, privileged and
 8 confidential.

9 Mandatory settlement conferences shall not be rescheduled without a showing of good cause
 10 and adequate notice to the Court. If counsel wish to reschedule this conference, they shall contact
 11 the Court at least ten (10) days prior to the conference. Absent exceptional circumstances, the Court
 12 will not reschedule this conference with less than ten (10) days notice. Only in extreme
 13 circumstances will the Court reschedule a mandatory settlement conference with less than 24 hours
 14 notice.

15 3. On or before **May 4, 2012**, all parties shall exchange with all other parties a list of all
 16 expert witnesses expected to be called at trial. The parties must identify any person who may be
 17 used at trial to present evidence pursuant to Rules 702, 703 or 705 of the Fed. R. Evid. This
 18 requirement is not limited to retained experts. The list shall include the name, address, and phone
 19 number of the expert and a brief statement identifying the subject areas as to which the expert is
 20 expected to testify. The list shall also include the normal rates the expert charges for deposition and
 21 trial testimony. On or before **May 31, 2012**, any party may supplement its designation in response
 22 to any other party's designation so long as that party has not previously retained an expert to testify
 23 on that subject.

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 26 “Complete authority” to settle means that the individuals at the settlement conference must be authorized to fully
 27 explore settlement options and to agree at that time to any settlement terms acceptable to the parties. G. Heileman
 28 Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have “unfettered
 discretion and authority” to change the settlement position of a party. Pitman v. Brinker Intl., Inc., 216 F.R.D. 481,
 485-486 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority to attend the
 conference includes that the person's view of the case may be altered during the face to face conference. *Id.* at 486.
 A limited or a sum certain of authority is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir. 2001).

4. Each expert witness designated by a party shall prepare a written report to be provided to all other parties no later than **July 16, 2012**, containing the information required by Federal Rule of Civil Procedure 26(a)(2)(A) and (B). This disclosure requirement applies to all persons retained or specially employed to provide expert testimony, or whose duties as an employee of the party regularly involve the giving of expert testimony.

Except as specifically provided below, any party that fails to make these disclosures shall not, absent substantial justification, be permitted to use evidence or testimony not disclosed at any hearing or at the time of trial. In addition, the Court may impose sanctions as permitted by Federal Rule of Civil Procedure 37(c).

5. Any party, through any expert designated, shall in accordance with Federal Rules of Civil Procedure 26(a)(2)(C) and 26(e), supplement any of its expert reports regarding evidence intended solely to contradict or rebut evidence on the same subject matter identified in an expert report submitted by another party. Any such supplemental reports are due on or before **July 30, 2012**.

6. All discovery shall be completed on or before **August 31, 2012**. “*Completed*” means that all discovery under Federal Rules of Civil Procedure 30-36 must be initiated a sufficient period of time in advance of the cut-off date, so *that it may be completed* by the cut-off date, taking into account the times for services, notice, and response as set forth in the Federal Rules of Civil Procedure. All disputes concerning discovery shall be brought to the attention of this Court no later than thirty days following the date upon which the event giving rise to the discovery dispute occurred. Counsel shall meet and confer pursuant to the requirements of Federal Rule of Civil Procedure 26 and Local Rule 26.1(a) before contacting the Court regarding discovery disputes.

Based on the agreement of both parties, the number of interrogatories and requests for admission is expanded to 50 per side.

7. All motions, other than motions to amend or join parties, or motions in limine, shall be **FILED** on or before **September 28, 2012**.

Motions will not be heard or calendared unless counsel for the moving party has obtained a motion hearing date from the law clerk of the judge who will hear the motion. Be advised that the

1 parties must file their moving papers within three days of receiving the motion hearing date from the
 2 Court. Be further advised that the period of time between the date you request a motion date and the
 3 hearing date may be **up to three months**. Please plan accordingly.

4 Briefs or memoranda in support of or in opposition to any pending motion shall not exceed
 5 25 pages in length without permission of the judge or magistrate judge who will hear the motion.
 6 No reply memorandum shall exceed 10 pages without leave of the judge or magistrate judge who
 7 will hear the motion.

8 Pursuant to Civil Local Rule 7.1(f)(3)(c), if an opposing party fails to file opposition papers
 9 in the time and manner required by Local Rule 7.1(e)(2), that failure may constitute a consent to the
 10 granting of a motion or other request for ruling by the court. Accordingly, all parties are ordered to
 11 abide by the terms of Local Rule 7.1(e)(2) or otherwise face the prospect of any pretrial motion
 12 being granted as an unopposed motion pursuant to Local Rule 7.1(f)(3)(c).

13 Should either party choose to file or oppose a motion for summary judgment or partial
 14 summary judgment, no Separate Statement of Disputed or Undisputed Facts is required.

15 8. Despite the requirements of Local Rule 16.1(f), neither party is required to file
 16 Memoranda of Contentions of Fact and Law at any time. The parties shall instead focus their efforts
 17 on drafting and submitting a proposed pretrial order by the time and date specified by Local Rule
 18 16.1(f)(6)(b).

19 9. All parties or their counsel shall fully comply with the Pretrial Disclosure
 20 requirements of Federal Rule of Civil Procedure 26(a)(3) on or before **December 24, 2012**. *Failure*
 21 *to comply with these disclosures requirements could result in evidence preclusion or other sanctions*
 22 *under Federal Rule of Civil Procedure 37.*

23 10. Counsel shall meet together and take the action required by Local Rule 16.1(f)(5) on
 24 or before **January 7, 2013**. At this meeting, counsel shall discuss and attempt to enter into
 25 stipulations and agreements resulting in simplification of the triable issues. Counsel shall exchange
 26 copies and/or display all exhibits other than those to be used for impeachment. The exhibits shall be
 27 prepared in accordance with Local Rule 16.1 (f)(3)(c). Counsel shall note any objections they have
 28 to any other parties' Pretrial Disclosures under Federal Rule of Civil Procedure 26(a)(3). Counsel

1 shall cooperate in the preparation of the proposed pretrial conference order.

2 11. The proposed final pretrial conference order, including objections any party has to
3 any other parties' Rule 26(a)(3) Pretrial Disclosures shall be prepared, served and lodged with the
4 Clerk of the Court on or before **January 21, 2013**, and shall be in the form prescribed in and in
5 compliance with Local Rule 16.1 (f)(6). Counsel shall also bring a copy of the pretrial order to the
6 pretrial conference for the Court.

7 12. The final pretrial conference shall be held before the **Honorable M. James Lorenz**,
8 United States District Court Judge, on **January 28, 2013**, at **11:00 a.m.**

9 13. The dates and times set forth herein will not be further modified except for good
10 cause shown.

11 14. Counsel for Plaintiff shall serve a copy of this order on any parties that enter this case
12 hereafter.

13 **IT IS SO ORDERED.**

14 DATED: November 15, 2011

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16 LOUISA S PORTER
17 United States Magistrate Judge

18 cc: The Honorable M. James Lorenz
19 All parties
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